

HUMAN SERVICES DEPARTMENT[441]

Notice of Intended Action

**Proposing rule making related to declaratory orders
and providing an opportunity for public comment**

The Human Services Department hereby proposes to amend Chapter 5, “Declaratory Orders,” Iowa Administrative Code.

Legal Authority for Rule Making

This rule making is proposed under the authority provided in Iowa Code section 17A.9.

State or Federal Law Implemented

This rule making implements, in whole or in part, Iowa Code section 17A.9.

Purpose and Summary

This proposed rule making is part of the Department’s five-year rules review process. This rule making makes changes to contact information and nonsubstantive changes to verbiage for consistency throughout the agency’s rules.

Fiscal Impact

This rule making has no fiscal impact to the State of Iowa.

Jobs Impact

After analysis and review of this rule making, no impact on jobs has been found.

Waivers

Any person who believes that the application of the discretionary provisions of this rule making would result in hardship or injustice to that person may petition the Department for a waiver of the discretionary provisions, if any, pursuant to rule 441—1.8(17A,217).

Public Comment

Any interested person may submit written comments concerning this proposed rule making. Written comments in response to this rule making must be received by the Department no later than 4:30 p.m. on June 7, 2022. Comments should be directed to:

Nancy Freudenberg
Department of Human Services
Hoover State Office Building, Fifth Floor
1305 East Walnut Street
Des Moines, Iowa 50319-0114
Email: appeals@dhs.state.ia.us

Public Hearing

No public hearing is scheduled at this time. As provided in Iowa Code section 17A.4(1)“b,” an oral presentation regarding this rule making may be demanded by 25 interested persons, a governmental subdivision, the Administrative Rules Review Committee, an agency, or an association having 25 or more members.

Review by Administrative Rules Review Committee

The Administrative Rules Review Committee, a bipartisan legislative committee which oversees rule making by executive branch agencies, may, on its own motion or on written request by any individual or group, review this rule making at its [regular monthly meeting](#) or at a special meeting. The Committee's meetings are open to the public, and interested persons may be heard as provided in Iowa Code section 17A.8(6).

The following rule-making actions are proposed:

ITEM 1. Amend rule 441—5.1(17A) as follows:

441—5.1(17A) Petition for declaratory order. Any person may file a petition with the department for a declaratory order as to the applicability to specified circumstances of a statute, rule, or order within the primary jurisdiction of the department at the ~~Office~~ Bureau of Policy Analysis Coordination, Department of Human Services, Hoover State Office Building, Fifth Floor, 1305 East Walnut, Des Moines, Iowa 50319-0114, or at appeals@dhs.state.ia.us. ~~A petition is deemed filed when it is received by that office.~~ The date of receipt of a petition is the day it reaches the department's rules administrator. The department shall provide the petitioner with a file-stamped copy of the petition if the petitioner provides the department an extra copy for this purpose. The petition ~~must~~ shall be typewritten or legibly handwritten in ink and ~~should~~ shall substantially conform to the following form:

BEFORE THE DEPARTMENT OF HUMAN SERVICES

Petition by (Name of Petitioner) for a
Declaratory Order on (Cite provisions of
law involved).



PETITION FOR
DECLARATORY ORDER

The petition ~~must~~ shall provide the following information:

1. A clear and concise statement of all relevant facts on which the order is requested. For public assistance policy rulings, the request should state facts such as the amount of income and resources of a person who may be affected by the policy.
2. A citation and the relevant language of the specific statutes, rules, or orders, whose applicability is questioned, and any other relevant law.
3. The questions petitioner wants answered, stated clearly and concisely.
4. The answers to the questions desired by the petitioner and a summary of the reasons urged by the petitioner in support of those answers. A request which seeks to change rather than to declare or determine policy will be denied.
5. The reasons for requesting the declaratory order and disclosure of the petitioner's interest in the outcome.
6. A statement indicating whether the petitioner is currently a party to another proceeding involving the questions at issue and whether, to the petitioner's knowledge, those questions have been decided by, are pending determination by, or are under investigation by, any governmental entity.
7. The names and addresses of other persons, or a description of any class of persons, known by the petitioner to be affected by, or interested in, the questions presented in the petition.
8. Any request by the petitioner for a meeting provided for by rule 441—5.7(17A).
9. The petitioner's state identification number, if applicable.

The petition ~~must~~ shall be dated and signed by the petitioner or the petitioner's representative. It ~~must~~ shall also include the name, mailing address, and telephone number of the petitioner and petitioner's representative and a statement indicating the person to whom communications concerning the petition should be directed.

ITEM 2. Amend subrule 5.3(3) as follows:

5.3(3) *Filing and form of petition for intervention.* A petition for intervention shall be filed at the office bureau of policy analysis. ~~A petition is deemed filed when it is received by that office.~~ The date of receipt of a petition is the day it reaches the department's rules administrator. The department shall provide the petitioner with a file-stamped copy of the petition for intervention if the petitioner provides an extra copy for this purpose. A petition for intervention ~~must~~ shall be typewritten or legibly handwritten in ink and ~~should~~ shall substantially conform to the following form:

BEFORE THE DEPARTMENT OF HUMAN SERVICES

Petition by (Name of Original Petitioner) for a Declaratory Order on (Cite provisions of law cited in original petition).	} PETITION FOR INTERVENTION
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The petition for intervention ~~must~~ shall provide the following information:

1. Facts supporting the intervenor's standing and qualifications for intervention.
2. The answers urged by the intervenor to the question or questions presented and a summary of the reasons urged in support of those answers.
3. Reasons for requesting intervention and disclosure of the intervenor's interest in the outcome.
4. A statement indicating whether the intervenor is currently a party to any proceeding involving the questions at issue and whether, to the intervenor's knowledge, those questions have been decided by, are pending determination by, or are under investigation by, any governmental entity.
5. The names and addresses of any additional persons, or a description of any additional class of persons, known by the intervenor to be affected by, or interested in, the questions presented.
6. Whether the intervenor consents to be bound by the determination of the matters presented by the declaratory order proceeding.

The petition ~~must~~ shall be dated and signed by the intervenor or the intervenor's representative. It ~~must~~ shall also include the name, mailing address, and telephone number of the intervenor and the intervenor's representative, and a statement indicating the person to whom communications should be directed.

ITEM 3. Amend rule 441—5.5(17A) as follows:

441—5.5(17A) *Inquiries.* Inquiries concerning the status of a declaratory order proceeding may be made to the Rules Administrator, ~~Office Bureau of Policy Analysis Coordination~~, Department of Human Services, Hoover State Office Building, Fifth Floor, 1305 East Walnut, Des Moines, Iowa 50319-0114, or at appeals@dhs.state.ia.us.

ITEM 4. Amend rule 441—5.6(17A) as follows:

441—5.6(17A) *Service and filing of petitions and other papers.*

5.6(1) *Service.* Except where otherwise provided by law, every petition for declaratory order, petition for intervention, brief, or other paper filed in a proceeding for a declaratory order shall be served by ~~mailing~~ mail, email, or personal delivery upon each of the parties of record to the proceeding, and on all other persons identified as affected by or interested in the questions presented, simultaneously with their filing. The party filing a document is responsible for service on all parties and other affected or interested persons. All documents filed shall indicate all parties or other persons served and the date and method of service.

5.6(2) *Filing.* All petitions for declaratory orders, petitions for intervention, briefs, or other papers in a proceeding for a declaratory order shall be filed with the ~~Office Bureau of Policy Analysis Coordination~~, Department of Human Services, Hoover State Office Building, Fifth Floor, 1305 East Walnut, Des Moines, Iowa 50319-0114, or at appeals@dhs.state.ia.us. All documents are considered filed upon receipt by the department's rules administrator.

ITEM 5. Amend subrule 5.9(2) as follows:

5.9(2) *Action on refusal.* A refusal to issue a declaratory order ~~must~~ shall indicate the specific grounds for the refusal and constitutes final department action on the petition.

ITEM 6. Amend rule 441—5.10(17A) as follows:

441—5.10(17A) Contents of declaratory order—effective date. In addition to the ruling itself, a declaratory order ~~must~~ shall contain the date of its issuance, the name of petitioner and all intervenors, the specific statutes, rules, or orders involved, the particular facts upon which it is based, and the reasons for its conclusion.

A declaratory order is effective on the date of issuance.

ITEM 7. Amend rule 441—5.11(17A) as follows:

441—5.11(17A) Copies of orders. A copy of all orders issued in response to a petition for a declaratory order shall be mailed promptly to the original petitioner and all intervenors. An email response may be sent to the petitioner and other parties upon agreement of the petitioner and each party as applicable.